

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 103 of 1989

in

SPECIAL CIVIL APPLICATION No 2606 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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BHUPENDRAKUMAR K JAIN

Versus

MAHARAJA SAYAJIRAO UNIVERSITY  
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Appearance:

MS VASUBEN P SHAH for Appellant  
MR BY MANKAD, AGP for Respondent No. 1  
MS DAXA R VYAS for Respondent No. 2  
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CORAM : MR.JUSTICE B.C.PATEL and  
MR.JUSTICE C.K.BUCH

Date of decision: 16/12/98

ORAL JUDGEMENT [ PER: C.K. BUCH, J ]

Unsuccessful petitioner of above-numbered Special Civil Application, has preferred this Letters Patent Appeal against the order dated 5.12.88 passed by learned Single Judge of this Court, agitating the grievance against respondent no.1 University that the appellant-original petitioner has not been awarded a gold medal, though he was entitled to get according to

the scheme to award Justice Chaturbhai N.Patel gold medal for the student who passes LL.M. Examination.

It is contended by the petitioner that he has cleared LL.M. examination successfully with 2nd Class and has secured the highest number of marks and even then he has not been awarded a gold medal by respondent no.1 University. Respondent no.2 is the student who has been awarded the said gold medal as per the decision taken by the university authorities.

It is not disputed that the appellant-petitioner had secured the maximum number of marks in LL.M. and was ranked first. Certificate was also issued by the Registrar dated 14.3.1986 and the same is produced vide Annex.A with the writ petition. However, at the time of appreciating the case of the appellant-petitioner as to his entitlement of the gold medal, learned Single Judge has appreciated three important and relevant aspects namely (i) whether the petitioner has secured the maximum number of marks, (ii) whether he has cleared the examination at the first attempt, and (iii) whether he has secured "class" within the meaning of the scheme. Though findings on two aspects viz. securing the highest number of marks and securing "class", are in favour of the petitioner, learned Single Judge held the petitioner has not cleared examination at the first attempt. This is admitted even by the petitioner in the petition itself that he has appeared twice in the first part of LL.M. Examination i.e. he has applied by filling in form for

appearing in the examination and later-on has opted not to appear in examination. Learned Single Judge has rightly held that to remain absent willfully and to opt not to appear cannot be equated with the fact wherein a student could not appear for the reasons beyond his or her control. Two judgments were cited before learned Single Judge. Both are dealt with by learned Single Judge and has rightly concluded that none of these two cases can help the petitioner. In the case of Abhijit v/s Dean, Government Medical College, Aurangabad, AIR 1987 SC 1362, the Apex Court has held that in the 3rd M.B.B.S. examination, student could not be said to have

appeared because of his physical inability as he was hospitalised and was not in a position to attend the classroom for certain days and, therefore, he had informed the Dean well in time that his terms as M.B.B.S. III should be treated as cancelled and accordingly same was cancelled and amount of fees was also paid back to that student. Here in this case, it is not the case of the appellant-petitioner that he had ever informed the university authorities that because of his unavoidable circumstances or for the reasons beyond his control, he was not in a position to appear in the examination. Obviously, the university was very much right at the time of deciding to award a gold medal, in holding that the petitioner has not cleared LL.M. examination at the first attempt. Such willful absence, if for this purpose is treated as one or more appearance, is a reasonable and judicious decision of the authorities concerned. According to us, learned Single Judge was right in rejecting the prayer of the petitioner.

We also do not see any merits in the case of the petitioner and hence this appeal requires to be dismissed. Therefore, appeal is dismissed. However, as the petitioner is a student, we are not inclined to award any costs. Hence, no orders as to costs.

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